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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,282	11/23/2001	James Clement Martinec		8828

7590 11/05/2003
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15922 PILGRIM CR.
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EXAMINER

THANH, QUANG D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 11/05/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/994,282

Applicant(s)

MARTINEC, JAMES CLEMENT

Examiner

Quang D. Thanh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 1-4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. The claims are objected to because the lines are crowded too closely together, making reading and entry of amendments difficult. Substitute claims with lines one and one-half or double spaced on good quality paper are required. See 37 CFR 1.52(b). Also in claims 1 and 4, semi-colon ";" should be used instead of period "." between the paragraphs.
2. Claims 1-4 are objected to because of the following informalities: In claim 1, "the intended height" lacks antecedent basis and should be -- an intended height --, "the elongated edge circumference" lacks antecedent basis and should be -- an elongated edge circumference--, "the proper position" " lacks antecedent basis and should be -- a proper position --, the phrase "may consist of either or both" is vague and indefinite, "via" should be -- comprising--; In claim 3, "and/or" is vague and indefinite; The remaining claims are objected to because they depend on an objected claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller, Jr. (4,688,556) in view of Ryan et al. (6,419,650).

4. Re claim 1, Keller discloses a body massage cylinder apparatus 10 (fig. 1-2) comprising: (a) a uni-body apparatus 11 (a single massage element 11 can be used as disclosed in col. 2, lines 3-8) constructed from a resilient rubber material (col. 1, lines 62-63) forming a cylinder shape (fig. 4-5) supported by an air chamber (inflation bladder, col. 1, lines 65-66), this massage element 11 is constructed with no separate moveable or removable main components (fig. 4); (b) dimensioned such that the user is at an intended height off the ground (fig. 1); (c) dimensioned such that the user is securely fitted when bi-secting an elongated edge circumference (fig. 1); (d) dimensioned such that the mass and size of the apparatus are sufficient to support the user in a proper position during use (fig. 1); and (f) an inflatable means comprising an inlet air valve 12 (fig. 4) to allow for adjusting the height and firmness by increasing or decreasing air pressure. Keller lacks ribbed or semi pointed formed surfaces in an alternating pattern that radiates outwards from the circumference. However, Ryan teaches a plurality of projections or nubs 14 arranged in a ribbed pattern that encircles the outer surface of the massage element 12 (fig. 2, col. 4, lines 29-34). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Keller's reference, to include the ribbed or semi pointed surfaces, as suggested by Ryan et al., so as to enhance the back massaging effect by providing acupressure stimulation (col. 2, lines 15-17).

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5. Re claim 2, Keller further teaches a rubber material is preformed into a cylinder shaped uni-body element which allows a sufficient air pressure and support (col. 1, line 59 to col. 2, line 8).

6. Re claim 3, the combined Keller/Ryan teaches a rubber material is preformed into a cylinder shaped uni-body element with a shell having ribbed formations 1 that would be extending across the entire shell and these ribbed formations are sufficiently spaced and alternate their pattern along the circumference of the apparatus.

7. Re claim 4, Keller further teaches the apparatus is constructed in a symmetrical uni-body design which yield a top surface parallel to the ground and a size giving the user optimum balance and control (fig. 1), a proper height off the ground (fig. 1), and capable to modify height and firmness of the apparatus by adjusting the air pressure via the inlet air valve 12 (col. 2, lines 24-30).

Response to Arguments

8. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Norris (2,466,470), Cassidy (744,718), and Bailey (D35,655) all teach a massage device having a plurality of protuberances formed on the outer surface.

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10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703) 308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Quang D. Thanh
Patent Examiner
Art Unit 3764
October 23, 2003

(QT)


NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700